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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES FRANCIS COONEY, JR.,

Defendant and Appellant.

E072330

(Super.Ct.No. SWF018044)

OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed.

John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

I

INTRODUCTION

Defendant and appellant Charles Francis Cooney, Jr., appeals from an order denying his petition for recall and resentencing of his 25-year-to-life indeterminate sentence for his current commitment offense of first degree residential burglary (Pen. Code,¹ § 459) under section 1170.18, subdivision (a).² Based on our independent review of the record, we find no error and affirm the order.

I

FACTUAL AND PROCEDURAL BACKGROUND³

In September 2006, defendant burglarized several homes in a senior community while under the influence of heroin and prescription drugs.

On September 12, 2007, a jury found defendant guilty of three counts of residential burglary (§ 459; counts 1, 2, & 3) and not guilty of one count of attempted residential burglary (§§ 664/459; count 4).

¹ All future statutory references are to the Penal Code unless otherwise stated.

² Defendant's appellate counsel notes that because defendant's resentencing motion involved a 25-year-to-life three strikes sentence, section 1170.126 was the correct resentencing statute, not section 1170.18 as referenced in defendant's motion. However, because the People and the trial court viewed defendant's motion as a petition for resentencing under section 1170.18, we will regard defendant's motion as a petition for resentencing under section 1170.18.

³ The factual background is taken from the probation report.

In a bifurcated proceeding, on September 14, 2007, the trial court found true that defendant had suffered four prior prison terms (§ 667.5, subd. (b)), two prior serious felony convictions (§ 667, subd. (a)), and two prior serious and violent felony strike convictions (§§ 667, subds. (c) & (e)(2)(A), 1170.12, subd. (c)(2)(A)).

On December 7, 2007, the trial court sentenced defendant to an indeterminate term of 25 years to life on count 1, plus concurrent 25-year-to-life indeterminate terms on counts 2 and 3. The trial court struck the prior prison terms and the prior serious felony convictions and awarded defendant 666 days of credit for time served.

On November 4, 2014, voters enacted Proposition 47, the Safe Neighborhoods and Schools Act (hereafter Proposition 47). It went into effect the next day. (Cal. Const., art. II, § 10, subd. (a).) As of its effective date, Proposition 47 classifies as misdemeanors certain drug- and theft-related offenses that previously were felonies or wobblers, unless they were committed by certain ineligible defendants. (Pen. Code, § 1170.18, subd. (a).) Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person currently serving a felony sentence or a person who has completed his or her sentence, whether by trial or plea, for an offense that is now a misdemeanor under Proposition 47, may petition before the trial court that entered the judgment of conviction in his or her case to have the felony conviction designated as a misdemeanor. (§ 1170.18, subds. (a) & (f).)

On November 28, 2018, defendant filed a petition for resentencing pursuant to section 1170.18. Although the cover sheet of defendant's petition referenced

section 1170.18, defendant's arguments in his petition related to section 1170.126. Nonetheless, in conclusion, defendant argued that he qualified for resentencing under "section 1170.18, subdivision (i) by virtue of the fact that his 1st Degree Burglary was punished by an indeterminate life term under the Three Strikes law, since 1st Degree Burglary is not '[a] serious and/or violent felony offense punishable in California by life imprisonment or death' under section 667, subdivision (e)(2)(C)(iv)(VIII)."

The People viewed defendant's motion as a petition for resentencing under section 1170.18, and filed a response, noting defendant was not eligible for the relief requested because first degree burglary is not a qualifying felony.

The trial court also treated defendant's motion as a petition for resentencing under section 1170.18, and on February 6, 2019, the trial court denied defendant's petition for recall and resentencing, finding first degree burglary is "not a qualifying felony."

On March 11, 2019, defendant filed a notice of appeal from the denial of his petition for "recall of sentence pursuant to [Penal Code section] 1170.18."

II

DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him on appeal. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has not done so.

An appellate court conducts a review of the entire record to determine whether the record reveals any issues which, if resolved favorably to defendant, would result in reversal or modification of the judgment. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-442; *People v. Feggans* (1967) 67 Cal.2d 444, 447-448; *Anders v. California, supra*, 386 U.S. at p. 744; see *People v. Johnson* (1981) 123 Cal.App.3d 106, 109-112.)

As previously noted, Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) Among the crimes reduced to misdemeanors by Proposition 47, rendering the person convicted of the crime eligible for resentencing, are: shoplifting where the property value does not exceed \$950 (§ 459.5); petty theft, defined as theft of property where value of the money, labor, real or personal property taken does not exceed \$950 (§ 490.2); and receiving stolen property where the property value does not exceed \$950 (§ 496). (§ 1170.18, subd. (a).) A residential burglary conviction under sections 459 and 460 is not included in the list of nonserious, nonviolent felonies subject to reclassification as misdemeanors under section 1170.18, subdivision (a). Therefore, the trial court properly denied defendant's petition.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

III

DISPOSITION

The order denying defendant's section 1170.18 petition for recall and resentencing is affirmed.

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CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

MENETREZ
J.